

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

CHARLES J. KOSCINSKI, D.P.M.)

Case No: IB-2001-126182

Podiatric Medical)
License No. EFE-1492)

Respondent.)

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby accepted and adopted by the Board of Podiatric Medicine of the Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on July 16, 2004.

DATED July 9, 2004.

BOARD OF PODIATRIC MEDICINE



Brad Naylor, D.P.M.
President

1 BILL LOCKYER, Attorney General
of the State of California
2 DIANE M. L. TAN, State Bar No. 86571
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 1702
4 Los Angeles, California 90013
Telephone: (213) 897-8764
5 Facsimile: (213) 897-1071

6 Attorneys for Complainant

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9 **BEFORE THE**
BOARD OF PODIATRIC MEDICINE
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **CHARLES J. KOSCINSKI, D.P.M.**
10527 Wiley Burke Avenue
14 Downey, California 90241

15 Podiatrist Certificate No. EFE 1492,

16 Respondent.

Case No. 1B-2001-126182

OAH No. L-2004010045

**STIPULATED SURRENDER
OF LICENSE AND ORDER**

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19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties in
20 the above-entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Complainant, James H. Rathlesberger ("Complainant"), is the Executive
23 Officer of the Board of Podiatric Medicine, Department of Consumer Affairs, State of California.
24 Complainant has brought this action solely in his official capacity as Executive Officer of the
25 Board. Complainant is represented in this matter by Bill Lockyer, Attorney General of the State
26 of California, by Diane M. L. Tan, Deputy Attorney General.

27 2. Respondent, Charles J. Koscinski, D.P.M. ("respondent"), is represented in
28 this matter by Matthew D. Rifat, Attorney at Law, whose address is as follows: Law Offices of

McCormick, Siepler & Baker, 500 North Brand Boulevard, Suite 500, Glendale, California
91203.

3. On July 21, 1972, the Board of Podiatric Medicine issued a Certificate to Practice Podiatric Medicine No. E 1492 to Charles Jerome Kosciński, D.P.M. That license expired on August 31, 2003. On September 1, 2003, respondent was issued retired status Podiatrist Certificate No. EFE 1492. Respondent's retired status license has an expiration date of August 31, 2005, unless that license is renewed.

JURISDICTION

4. The Accusation in Case No. 1B-2001-126182 was filed with the Board of Podiatric Medicine (“the Board”), Department of Consumer Affairs, State of California, on October 28, 2003. This matter against respondent is currently pending. The Accusation and all other statutorily required documents were duly served on respondent on October 28, 2003. On or about November 12, 2003, respondent’s counsel submitted on behalf of respondent a Notice of Defense to contest the Accusation. A copy of the Accusation is attached hereto as “Exhibit 1” and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with his counsel, and fully understands the charges and allegations in the Accusation in this matter. Respondent also has carefully read, fully discussed with his counsel, and fully understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations that are set forth in the Accusation; the right to consult with and be represented by counsel at his own expense; the right to confront and cross-examine the witnesses testifying against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents and other things in his defense and as proof of mitigation; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act (Gov. Code, §§ 11340 et seq., 11370 et seq., 11400 et

seq., and 11500 et seq.) and other applicable laws.

7. Respondent voluntarily, knowingly and intelligently waives and gives up each and every right as stated above.

ADMISSIONS

8. Respondent understands that the charges and allegations in the Accusation, if proven at a hearing, constitute causes for imposing discipline upon his podiatrist certificate.

9. In the event that respondent seeks relicensure or reinstatement of his license to practice podiatric medicine in California, respondent will admit that he did not provide appropriate podiatric medical care to a patient in violation of section 2234 of the Business and Professions Code (“the Code”) and that he did not maintain adequate and accurate medical records regarding his care and treatment of that patient in violation of section 2266 of the Code as alleged in the Accusation in Case No. 1B-2001-126182, and that such conduct constitute causes for discipline.

10. In order to resolve this matter without the necessity of a costly and protracted hearing, and because respondent has voluntarily retired from the practice of podiatric medicine, respondent agrees to surrender his certificates to practice podiatric medicine, including Podiatrist Certificates No. E 1492 and No. EFE 1492, for the Board's formal acceptance and to be bound by the Board's Order as set forth below.

EFFECTS OF SURRENDER

11. Respondent understands that by signing this stipulation, he enables the Board to issue its order accepting the surrender of his Podiatrist Certificates without further process.

12. Upon acceptance of the stipulation by the Board, respondent understands that he will no longer be permitted to practice podiatric medicine in California, and also agrees to surrender and cause to be delivered to the Board his certificates to practice podiatric medicine, including his wall certificates and wallet cards, all triplicate and regular prescriptions, Drug Enforcement Administration Drug Order Forms, and any and all Drug Enforcement Administration permits issued to him, before the effective date of the Board's Decision in this

matter.

13. Respondent fully understands and agrees that if he ever files an application for relicensure or reinstatement of his license to practice podiatric medicine in the State of California, the Board shall treat such application as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a license which has been revoked, that are in effect at the time the application is filed, and must reimburse the Board the sum of One Thousand Dollars (\$1,000.00) for the costs of investigation and prosecution of this matter as a requirement for relicensure or reinstatement of such license. In the event that respondent seeks relicensure or reinstatement of his license to practice podiatric medicine in California, his admissions as set forth in Paragraph 9 of this Stipulated Surrender of License and Order shall be deemed to be true and correct when the Board determines whether to grant or deny the application for relicensure or reinstatement of his license to practice podiatric medicine.

CONTINGENCY

14. This Stipulated Surrender of License and Order shall be subject to the approval of the Board. Respondent understands and agrees that the Board of Podiatric Medicine's staff and counsel for Complainant may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by respondent or his counsel. By signing this stipulation, respondent understands and agrees that he may not withdraw this stipulation or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board does not adopt this stipulation as its Decision in this matter, except for this paragraph, the Stipulated Surrender of License and Order shall have no force or effect on any of the parties, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from taking any further action in this matter as a result of its consideration of this stipulation and settlement. This Stipulated Surrender of License and Order shall resolve all matters that were alleged or charged in the Accusation in this case.

15. The parties agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile copies of the signatures thereto, shall have the same force

1 and effect as the original of this Stipulated Surrender of License and Order.

2 16. For the purpose of resolving this matter and in consideration of the
3 foregoing admissions and stipulations, the parties agree that the Board shall, without further
4 notice or formal proceeding, issue and enter the following Order:

5 **ORDER**

6 **IT IS HEREBY ORDERED** that the surrender of Podiatrist Certificates No. E
7 1492 and No. EFE 1492, including, but not limited to, the wall certificates and wallet cards, all
8 triplicate and regular prescriptions, Drug Enforcement Administration Drug Order Forms, and
9 any and all Drug Enforcement Administration permits issued to Respondent Charles J.
10 Koscinski, D.P.M., are accepted by the Board of Podiatric Medicine.

11 **IT IS ALSO ORDERED** that respondent shall no longer have any of the rights
12 and privileges to practice podiatric medicine in the State of California from the effective date of
13 the Board of Podiatric Medicine's Decision in this matter.

14 **IT IS FURTHER ORDERED** that respondent shall comply with all of the
15 requirements set forth in the Stipulated Surrender of License and any other applicable
16 requirements in the event that he seeks relicensure or reinstatement of his certificate to practice
17 podiatric medicine in the State of California.

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20 **ACCEPTANCE**

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22 I, Charles J. Koscinski, D.P.M., have carefully and fully read the above Stipulated
23 Surrender of License and Order, and have fully discussed the terms and conditions and other
24 matters contained therein with my attorney, Matthew D. Rifat. I fully understand and agree to all
25 of the terms and conditions set forth in this Stipulated Surrender of License and Order.

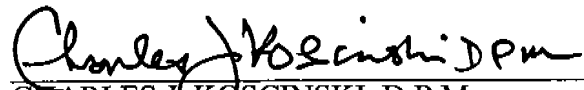
26 I hereby freely and voluntarily sign this stipulation with the full understanding and
27 knowledge of its force and effect. I agree to surrender and deliver to the Board of Podiatric
28 Medicine prior to the effective date of the Board's Decision in this matter, my certificates to

1 practice podiatric medicine, including Podiatrist Certificates No. E 1492 and No. EFE 1492,
2 including the wall certificates and wallet cards issued by the Board, all triplicate and regular
3 prescriptions, Drug Enforcement Administration Drug Order Forms, and any and all Drug
4 Enforcement Administration permits issued to me, for the Board's formal acceptance.

5 By signing this Stipulated Surrender of License and Order, I recognize that upon
6 its formal acceptance by the Board, I will no longer have any of the rights and privileges to
7 practice podiatric medicine in the State of California. I hereby freely, voluntarily, intelligently
8 and knowingly agree to be bound by this Stipulated Surrender of License and Order.

9 I further agree that a facsimile copy of this Stipulated Surrender of License and
10 Order, including facsimile copies of the signatures contained therein, may be used with the same
11 force and effect as the original of this Stipulated Surrender of License and Order.

12 DATED: 04 09 04.

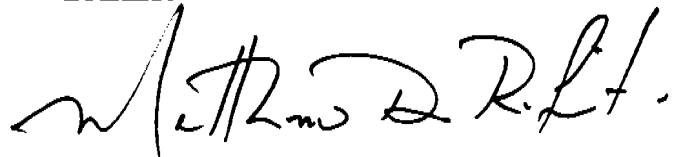
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16 CHARLES J. KOSCINSKI, D.P.M.
Respondent

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18 CONCURRENCE

19 I have read and fully discussed with Respondent Charles J. Koscinski, D.P.M., the
20 terms and conditions and other matters contained in the above Stipulated Surrender of License
21 and Order. I approve the form and content of the stipulation and order.

22 DATED: April 9, 2004.

23 LAW OFFICES OF McCORMICK, SIEPLER &
24 BAKER

25 

26 MATTHEW D. RIFAT
27 Attorney at Law

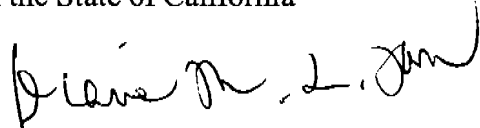
28 Attorneys for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Podiatric Medicine, Department of Consumer Affairs, State of California.

DATED: April 5, 2004

BILL LOCKYER, Attorney General
of the State of California



DIANE M. L. TAN
Deputy Attorney General

Attorneys for Complainant

DOJ Docket/Matter ID Number: 03576160LA2003AD0565
koscinski-charles.stp-sur.wpd

Exhibit 1

Accusation

Case No. 1B-2001-126182

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of the State of California
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Attorneys for Complainant

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 1B-2001-126182

CHARLES J. KOSCINSKI, D.P.M.
10527 Wiley Burke Avenue
Downey, California 90241

ACCUSATION

Podiatrist Certificate No. EFE 1492

Respondent.

Complainant alleges:

PARTIES

1. James Rathlesberger (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Board of Podiatric Medicine, Department of Consumer Affairs.

2. On or about July 21, 1972, the Board of Podiatric Medicine issued Podiatrist Certificate Number E 1492 to CHARLES J. KOSCINSKI, D.P.M. (Respondent). The Podiatrist Certificate was in full force and effect at all times relevant to the charges brought herein. On or about September 1, 2003, the Board of Podiatric Medicine issued a retired Podiatrist Certificate Number EFE 1492 to CHARLES J. KOSCINSKI, D.P.M., which will expire August 31, 2005, unless renewed.

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1 itself, the administrative law judge who presided at the hearing shall be present during the
2 board's consideration of the case and shall assist and advise the board.”

3 6. Section 2227 of the Code states:

4 “(a) A licensee whose matter has been heard by an administrative law judge of
5 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
6 Code, or whose default has been entered, and who is found guilty may, in accordance
7 with the provisions of this chapter:

8 “(1) Have his or her license revoked upon order of the division.

9 “(2) Have his or her right to practice suspended for a period not to exceed one
10 year upon order of the division.

11 “(3) Be placed on probation and be required to pay the costs of probation
12 monitoring upon order of the division.

13 “(4) Be publicly reprimanded by the division.

14 “(5) Have any other action taken in relation to discipline as the division or an
15 administrative law judge may deem proper.

16 “(b) Any matter heard pursuant to subdivision (a), except for warning letters,
17 medical review or advisory conferences, or other matters made confidential or privileged
18 by existing law, is deemed public, and shall be made available to the public by the
19 board.”

20 7. Section 2234 of the Code states, in part:

21 “The Division of Medical Quality shall take action against any licensee who is
22 charged with unprofessional conduct. In addition to other provisions of this article,
23 unprofessional conduct includes, but is not limited to, the following:

24 “(a) Violating or attempting to violate, directly or indirectly, or assisting in or
25 abetting the violation of, or conspiring to violate, any provision of this chapter [Chapter
26 5, the Medical Practice Act].

27 “(b) Gross negligence.[]

28 “(d) Incompetence.[]”

1 8. Section 2266 of the Code states:

2 “The failure of a physician and surgeon to maintain adequate and accurate records
3 relating to the provision of services to their patients constitutes unprofessional conduct.”

4 9 Section 14124.12, subdivision (a), of the Welfare and Institutions Code
5 states:

6 “(a) Upon receipt of written notice from the Medical Board of California, the
7 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,
8 that a licensee's license has been placed on probation as a result of a disciplinary action,
9 the department may not reimburse any Medi-Cal claim for the type of surgical service or
10 invasive procedure that gave rise to the probation, including any dental surgery or
11 invasive procedure, that was performed by the licensee on or after the effective date of
12 probation and until the termination of all probationary terms and conditions or until the
13 probationary period has ended, whichever occurs first. This section shall apply except in
14 any case in which the relevant licensing board determines that compelling circumstances
15 warrant the continued reimbursement during the probationary period of any Medi-Cal
16 claim, including any claim for dental services, as so described. In such a case, the
17 department shall continue to reimburse the licensee for all procedures, except for those
18 invasive or surgical procedures for which the licensee was placed on probation.”

19 10. Section 2497.5 of the Code states:

20 “(a) The board may request the administrative law judge, under his or her
21 proposed decision in resolution of a disciplinary proceeding before the board, to direct
22 any licensee found guilty of unprofessional conduct to pay to the board a sum not to
23 exceed the actual and reasonable costs of the investigation and prosecution of the case.

24 “(b) The costs to be assessed shall be fixed by the administrative law judge and
25 shall not in any event be increased by the board. When the board does not adopt a
26 proposed decision and remands the case to an administrative law judge, the
27 administrative law judge shall not increase the amount of any costs assessed in the
28 proposed decision.

“(c) When the payment directed in the board's order for payment of costs is not made by the licensee, the board may enforce the order for payment by bringing an action in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

“(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

“(e)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.”

“(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within one year period for those unpaid costs.

“(f) All costs recovered under this section shall be deposited in the Podiatry Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.”

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

11. Respondent is subject to disciplinary action under section 2234, subdivision (b) of the Code, in that respondent engaged in acts and omissions in the care and treatment of a patient constituting an extreme departure from the standard of practice. The circumstances are as follows:

A. Sometime in September 1999, A.R., a middle-aged female, developed a small cyst on her third left toe, accompanied by slight bleeding under the toenail. She sought medical attention for this problem at Kaiser Permanente in Baldwin Park, where she was examined by several physicians and diagnosed with ingrown toenail.

1 B. On or about October 28, 1999, A.R. was examined by respondent,
2 a podiatrist assigned to the orthopaedic department at the same Kaiser facility, who also
3 suspected ingrown toenail. The cyst remained in place and A.R. continued to experience
4 slight bleeding from underneath the third left toenail.

5 C. On or about January 21, 2000, respondent examined A.R.'s third
6 left toe and noted a bleeding lesion, which he described as a granuloma.

7 D. On or about January 27, 2000, respondent excised a mass from
8 underneath A.R.'s third left toenail, and sent this biopsied specimen to Kaiser's
9 pathologist.

10 E. On or about February 26, 2000, respondent examined A.R. and
11 noted that the pathology report had mentioned the excision of a Clark Grade III
12 malignant melanoma. In actuality, the pathology report expressed the following
13 diagnosis: "[1] malignant melanoma, in vertical growth phase, probable Clark Level III
14 or greater, Breslow's thickness uncertain. . .; [2] skin ulceration: present; [3] foci
15 suggestive of vascular invasion; [4] tumor necrosis: present; [5] greater than 6 mitoses
16 per millimeter squared; [6] no significant lymphocytic response; [7] margins not
17 evaluable." Respondent did not document the performance of a work-up and/or a referral
18 of A.R. to a specialist in the treatment of cancer. Respondent admittedly assumed that the
19 dermis level malignancy had been resolved through the biopsy surgery. Respondent did
20 not note that he communicated the pathology result to A.R.

21 F. On or about August 15, 2000, respondent examined A.R., noting
22 that the third left toe nail bed had healed, but that the nail had not regrown and the cyst
23 had increased in size to less than one centimeter. Respondent ordered x-rays of the
24 affected area, and recommended that A.R. continue treatment at home by soaking the toe
25 and applying antibiotic ointment.

26 G. On or about September 18, 2000, A.R.'s left toe cyst broke open.
27 Her primary physician, Michael Schwartz, M.D., phoned respondent to recommend a
28 tissue biopsy.

1 H. On or about September 22, 2000, respondent performed a biopsy of
2 A.R.'s third left toe with a 4 mm punch. Respondent noted the presence of a nodular
3 shaped lesion with firm, capsulated, regular borders of a reddish hue.

4 I. On or about September 26, 2000, respondent was informed by
5 Kaiser's pathologist, Robert H. Zuch, M.D., that the following diagnosis had been
6 reached based on a laboratory analysis of the specimen taken from A.R: invasive
7 melanoma with extension to the deep dermis, subcutaneous fat interface (at least Clark's
8 Level III, or greater), focal area suggestive of vascular-lymphatic plugging, and tumor
9 extends to and involves margins of biopsy. The pathology report indicated that the
10 malignancy had metastasized. Respondent did not place a copy of this report in his
11 records for A.R.

12 J. On or about October 4, 2000, A.R.'s third left toe was amputated.

13 H. On or about February 17, 2001, A.R. died from the effects of the
14 metastasized malignant melanoma.

15 I. Respondent engaged in an extreme departure from the standard of
16 practice in the care and treatment of Patient A.R. as follows:

17 (1) By failing to perform an adequate work-up and make an
18 appropriate referral of the patient to a specialist in response
19 to the pathology report of February 26, 2000; and/or failing
20 to document same.

21 (2) By failing to document that during the period January
22 through September 2000 the patient was informed of the
23 pathology findings of February 26, 2000.

24 SECOND CAUSE FOR DISCIPLINE

25 (Incompetence)

26 12. Respondent is subject to disciplinary action under section 2234,
27 subdivision (d) of the Code, in that respondent demonstrated a lack of medical knowledge and
28 judgment in his care and treatment of a patient. The circumstances are as follows:

1 A. The facts, circumstances and opinions stated at above numbered
2 paragraph 11 are incorporated by reference herein as if fully set forth.

3 THIRD CAUSE FOR DISCIPLINE

4 (Inadequate Records)

5 13. Respondent is subject to disciplinary action under section 2266 of the
6 Code, in that respondent failed to maintain adequate and accurate records of his care and
7 treatment of a patient. The circumstances are as follows:

8 A. The facts, circumstances and opinions stated at above numbered
9 paragraph 11 are incorporated by reference herein as if fully set forth.

10 PRAYER

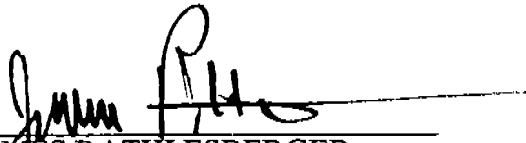
11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Board of Podiatric Medicine issue a decision:

13 1. Revoking or suspending Podiatrist Certificate Number E 1492, issued to
14 CHARLES J. KOSCINSKI, D.P.M.;

15 2. Ordering CHARLES J. KOSCINSKI, D.P.M. to pay the Board of
16 Podiatric Medicine the reasonable costs of the investigation and enforcement of this case,
17 pursuant to Business and Professions Code section 2497.5;

18 3. Taking such other and further action as deemed necessary and proper.

19 DATED: October 28, 2003

20
21 
22 JAMES RATHLESBERGER
23 Executive Officer
24 Board of Podiatric Medicine
25 Department of Consumer Affairs
26 State of California
27 Complainant
28